

FILED '10 MAR 08 11:24 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

STEVEN WAYNE DEVINE,

Petitioner,

Civil No. 09-1298-TC

v.

FINDINGS AND
RECOMMENDATION

RICARDO E. CHAVEZ,

Respondent.

COFFIN, Magistrate Judge.

Petitioner, a former federal inmate, filed an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the District of Arizona challenging the authority of the Bureau of Prisons (BOP) to collect restitution payments under its Inmate Financial Responsibility Program (IFRP). The petition stated two other "grounds." (1) "the criminal case before the Court now and being served is a terminated and revoked sentence"; and (2) United States Attorney has notified

petitioner that they are the active collector now and that collection will began and will be enforced after release from incarceration. Petitioner was released from federal custody before a ruling on his petition was issued.

The District Court for the District of Arizona granted petitioner's motion to withdraw as moot his claim against the BOP, then transferred the remaining "claims" to the District of Oregon.

Respondent has moved to dismiss (#101).

"Section 2241 provides that habeas corpus review is available to persons who are 'in custody in violation of the Constitution or laws or treaties of the United States.'" Gutierrez-Chavez v. I.N.S., 298 F.3d 824, 827 (9th Cir. 2002). Petitioner is not in custody. Moreover, § 2241 may be used only to challenge the "legality or duration of confinement." Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979. Petitioner does not make any allegation related to the duration or legality of his "confinement" - nor could he; he challenges the collection of his restitution payments. This is not a matter cognizable under 28 U.S.C. § 2241, but rather a matter to be taken up with the sentencing court.

Petitioner has failed to allege a claim cognizable under 28 U.S.C. § 2241 or any other basis for this court's jurisdiction over the claim in his petition. Petitioner's Petition should be denied and this proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 8 day of ^{March}~~February~~, 2010.



Thomas M. Coffin
United States Magistrate Judge